

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DAVENPORT LIMITED PARTNERSHIP,

Plaintiff,

VS.

HENRY A. SINGER,

Defendant.

CASE NO. 8:11CV210

ORDER

This matter is before the Court on Plaintiff Davenport Limited Partnership’s Motion for Leave to File an Amended Complaint (Filing No. 18). The Court previously dismissed (without prejudice) Plaintiff’s first Complaint (Filing No. 1) on res judicata grounds. (Filing Nos. 16 and 17). In its proposed First Amended Complaint, Plaintiff now alleges that Defendant Henry A. Singer withdrew assets from various partnerships after Plaintiff obtained judgments against those partnerships, leaving them incapable of satisfying their obligations. (Filing No. 18-1, at new ¶¶ 14–16, 23). Plaintiff submits that this constitutes an “intervening change in facts or circumstances” such that res judicata should not bar its current action. *Ichertz v. Orthopaedic Specialists of Nebraska, P.C.*, 730 N.W.2d 798, 804 (Neb. 2007) (quoting *Moulton v. Bd. of Zoning App., Lincoln*, 555 N.W.2d 39, 45 (Neb. 1996)); (Filing No. 18, at ¶¶ 5–7).

Plaintiff has requested leave to amend its complaint pursuant to Fed. R. Civ. P. 15. (Filing No. 18, at ¶ 9). The Court previously dismissed Plaintiff's first Complaint, however, without granting leave to amend (Filing No. 17), and "[a]fter a complaint is dismissed, the right to amend under Fed. R. Civ. P. 15(a) terminates." *Dorn v. State Bank of Stella*, 767 F.2d 442, 443 (8th Cir. 1985) (citing *Czeremcha v. Int'l Ass'n of Machinists & Aerospace Workers*, 724 F.2d 1552, 1556 (11th Cir.1984)).

The Court will construe Plaintiff's motion as one seeking to vacate the Court's judgment under Fed. R. Civ. P. 60(b)(1), as well as for leave to file the proposed Amended Complaint, and the Defendant will respond to the Motion, so construed, on or before October 17, 2011.

IT IS ORDERED:

Defendant Henry A. Singer will respond to Plaintiff's Motion to File an Amended Complaint (Filing No. 18) (construed as a motion to vacate judgment under Fed. R. Civ. P. 60(b)(1), and to file an Amended Complaint), on or before Monday, October 17, 2011.

DATED this 27th day of September, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge